



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

JRE
Docket No: 2204-99
28 March 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 9 March 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Navy on 25 January 1965. You were evaluated by a psychiatrist on 18 November 1966. The psychiatrist found no evidence of psychoneurosis, psychosis or organic brain damage, but noted that you appeared to have many personality traits consistent with an emotionally unstable personality. You were discharged by reason of unfitness on 13 May 1967, with a discharge under other than honorable conditions, based on your commission of multiple offenses, for which you received nonjudicial punishments and two convictions by special courts-martial. In the years since your discharge, you have been given a number of psychiatric diagnoses, the majority of which relate to personality or behavior problems, rather than symptoms of a major mental disorder. The Veterans Administration (VA) denied your request for gratuitous benefits after determining that your discharge was issued under dishonorable conditions. The Board noted that the VA could have granted you benefits in accordance with 38 Code of Federal Regulations, section 3.12(b), had it determined that you were insane when you committed the acts of misconduct which resulted in your discharge.

The Board noted that a discharge based on misconduct generally takes precedence over and precludes referral of a service member to the Disability Evaluation System. In order for you to become entitled to disability benefits administered by the Department of the Navy, you must demonstrate that your discharge for misconduct was erroneous or unjust, and that you were unfit for duty by reason of physical disability at the time of your discharge. It should be noted that a personality disorder is not considered to be a disability under the laws administered by the Department of the Navy or the VA. Although it is possible that you experienced some of the symptoms of a major mental disorder during your enlistment, there is no indication that you were unfit to perform the duties of your office, grade, rank or rating because of a mental disorder, and the Board was not persuaded that you lacked mental responsibility when you committed the misconduct which resulted in your discharge. It concluded that your discharge was proper, and that its characterization as under other than honorable conditions was warranted, given your repeated act of misconduct and the absence of any significant matters in extenuation or mitigation thereof. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director